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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1975

No. 75-1515

LOCAL 17, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,
Petitioner,

vs.

PARAMOUNT TRANSPORT SYSTEMS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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Subject Index

	Page
Preliminary statement	1
Opinions of the courts below	2
Jurisdiction	2
Questions presented	2
Argument	3
1. The question of the liability of petitioner was conclusively settled by the prior summary judgment on that issue	3
Conclusion	6

Table of Authorities Cited

Cases	Pages
Paramount Transport Systems v. Local 150 etc., 436 Fed. 2d 1064 (9th Cir. 1971)	2, 4, 6

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BRIEF IN OPPOSITION

PRELIMINARY STATEMENT

The decision of the Court of Appeals is correct in every respect. There is no new or significant issue raised in the Petition which would justify review by this Court.

All issues involving liability of Petitioner were resolved against it by the District Court on Respond-

ent's motion for summary judgment. That judgment was affirmed in *Paramount Transport Systems v. Local 150 etc.,* 436 Fed.2d 1064 (9th Cir. 1971), on an interlocutory appeal and has been final for many years.

The issue of liability of the labor unions to Respondent having been resolved with finality in the earlier summary judgment, the sole issue before the District Court in this proceeding was damages. Petitioner does not claim that the award of damages was excessive, but rather, asserts other alleged errors.

OPINIONS OF THE COURTS BELOW

Petitioner makes accurate reference to the various opinions of the Courts and the NLRB below.

JURISDICTION

The jurisdiction of this Court is accurately stated in the Petition.

QUESTIONS PRESENTED

1. The first question, allegedly presented by the Petition is whether the decision of the NLRB trial examiner should have been excluded from evidence. Even though it is not stated in the petition, the remainder of that question must be whether reversible error resulted in any event.

2. The second question, as stated by Petitioner assumes the answer. Stated properly, the question is whether the record shows that the unlawful activity materially contributed to, or was a substantial factor in bringing about the damages.

ARGUMENT

1. THE QUESTION OF THE LIABILITY OF PETITIONER WAS CONCLUSIVELY SETTLED BY THE PRIOR SUMMARY JUDGMENT ON THAT ISSUE.

The NLRB trial examiner found that unlawful picketing and other interference were engaged in by Petitioner and Local 150, Chauffeurs, Teamsters etc., and by Local 17, and that as a proximate result of such unlawful activity Campbell Soup Company, one of Respondent's principal customers, ceased to do business with him. Petitioner does not deny that the NLRB so found (Brief of Petitioner, p. 16), but asserts that its finding in that regard was on an "immaterial issue", and should not have been given collateral estoppel effect.

What Petitioner insists upon refusing to recognize is the fact that the question of whether the NLRB's finding should be given collateral effect was the issue on the motion for partial summary judgment.

The District Judge, in ruling on the motion for partial summary judgment posed the issue as follows:

> "I. LEGAL ISSUE ON MOTION
>
> "At this state, the only question presented is:
>
> In a civil suit for damages allegedly suffered as a result of an unfair labor practice (an unlaw-

ful secondary boycott) is the determination of the NLRB that such an unfair labor practice has occurred to be considered res judicata and therefore binding on the District Court as trier of fact?"

Petitioner's Brief, Appendix, page 14.

The District Judge answered that question in the affirmative and granted the motion for partial summary judgment. That partial summary judgment was affirmed. *Paramount Transport System v. Local 150 etc.*, 436 Fed.2d 1064 (1971). Thus, the District Court and the Ninth Circuit Court of Appeals held that in the dispute between the Respondent and the unions, the findings of the NLRB were upon material issues supported by the evidence before it. Otherwise, the granting of the motion for partial summary judgment would have been error. The question of whether it was error has been forever foreclosed by the finality of the summary judgment affirmed in 1971 on the interlocutory appeal. That judgment is certainly the law of the case, and cannot be challenged here.

An additional reason for the denial of this Petition is that the District Court did not in fact foreclose the Petitioner from litigating the question of whether the conduct of the unions was a proximate cause of damage to Respondent. The jury was fully instructed on proximate cause. The jury was instructed that plaintiff could not recover unless it proved that some illegal act of each union was a proximate cause of some injury and consequent damage to the business of plaintiff. The jury was also instructed that no

damages could be assessed against any defendant unless it was established by a preponderance of the evidence that it was proximately caused by the illegal acts of that defendant. Reporter's Transcript, page 771.

In the exercise of an over abundance of caution, the District Judge also instructed the jury as follows:

"In order to award damages to plaintiff you must find that the conduct of Local 150 at National Ice on January 22, 1968, and the conduct of Local 17 at Bert McDowell on January 16, 1968 constitutes a proximate cause of the damages alleged to have been suffered by plaintiff."

"Plaintiff may not recover any losses which it suffered during the dispute with Local 150 on account of lawful primary or secondary activity engaged in by Local 150 or Local 17."

Reporter's Transcript, page 774.

Thus, as a practical matter, the issue of proximate cause, in instructions offered by defendants, was placed squarely before the jury. The jury was told that there could be no recovery of damages by the plaintiff unless proximate cause was shown by the evidence. The proximate cause had to be acts which were illegal, the District Judge said. Otherwise, there could be no recovery.

When stripped bare, the issue is not whether the District Court precluded defendants from arguing the proximate cause issue, because clearly, that was one of the issues before the jury. The naked issue is whether it was error to admit the findings of the trial

examiner. If it did nothing else, the decision of the U.S. Court of Appeals in *Paramount Transport Systems v. Local 150, supra,* settled the question of the sufficiency of his findings to support partial summary judgment on the question of liability. Had those findings not been on material issues, and had they not been sufficiently supported by substantial evidence, it follows that the summary judgment would have been improper. Petitioner, however, seems to desire to litigate the question of liability over again because the issues before the NLRB and those before the District Court were somehow not the same. This claim is relatively new, because in *Paramount Transport Systems v. Local 150 et al., supra,* the Court of Appeals observed:

> "No suggestion is made that the issues before the Board and before the Court were different, except in court the damage issue was added."
>
> Petitioner's Brief, Appendix, page 10.

CONCLUSION

The essential contentions made here by Petitioner have been made over the past eight years to the NLRB, the District Court on the motion for partial summary judgment on liability, and on the motion for new trial after the entry of the judgment on the verdict of the jury. It has also been made in the Court of Appeals three times—on the interlocutory appeal from the summary judgment on liability, on the appeal from the judgment on the verdict of the jury, and on the petition for rehearing. Each effort

to convince anyone of the merits of its claim has failed. This one too must fail because the judgment is fully supported by the law and the evidence. There is no basis whatsoever for this Court reviewing again that which has been subjected to administrative or judicial scrutiny at least six times without anyone except Petitioner claiming that its position has merit.

The Petition for a writ of certiorari should be denied.

Dated, Sacramento, California,
May 6, 1976.

Respectfully submitted,
NATHANIEL S. COLLEY,
Attorney for Respondent
Paramount Transport Systems.